

## APPLICABLE STATUTES & RULES

### 37 C.F.R. § 1.56 - DUTY OF DISCLOSURE; FRAUD; STRIKING OR REJECTION OF APPLICATIONS

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the inventor, on each attorney or agent who prepares or prosecutes the application and on every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application. All such individuals have a duty to disclose to the Office information they are aware of which is material to the examination of the application. Such information is material where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. The duty is commensurate with the degree of involvement in the preparation or prosecution of the application.

Information relating to the following factual situations enumerated in 35 U.S.C. § 102 and § 103 should be considered *material* under 37 C.F.R. § 1.56(a):

A person shall be entitled to a patent unless --

- (a) The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

### 35 U.S.C. § 103 - CONDITIONS FOR PATENTABILITY; NON-OBVIOUS SUBJECT MATTER

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### 35 U.S.C. § 119 - BENEFIT OF EARLIER FILING DATE IN FOREIGN COUNTRY; RIGHT OF PRIORITY (Applicable Portion)

An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which has been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.

### 35 U.S.C. § 120 - BENEFIT OF EARLIER FILING DATE IN THE UNITED STATES

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, by the same invention shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

### 35 U.S.C. § 112 - SPECIFICATION (Applicable Portion)

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

SENT BY: SHELDON &amp; MAK

; 1-24-01 ; 15:54 ;

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9095584887;# 8

**SHELDON & MAK**

ATTORNEY DOCKET NO.: 13070-1

**United States Patent Application****COMBINED DECLARATION AND POWER OF ATTORNEY**

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: "Method for the Evaluation of Implantable Materials"

The specification of which

a. ☒ is attached hereto

b. ☐ was filed on \_\_\_\_\_ application serial no. \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable)  
(In the case of a PCT-filed application) described and claimed in International no. \_\_\_\_\_ filed \_\_\_\_\_ and as amended on \_\_\_\_\_ (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, §119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

a. ☐ no such applications have been filed.

b. ☒ such applications have been filed as follows:

**PROVISIONAL APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119(e)**

APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
60/178,538	26 January 2000	Pending

**ALL FOREIGN APPLICATIONS, IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)**

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, §120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

## POWER OF ATTORNEY

SHELDON & MAK  
DOCKET NUMBER  
13070-1

LOMA LINDA UNIVERSITY, owner(s) of the application for United States

Letters Patent for an improvement in "Method for the Evaluation of Implantable Materials"

by Aladar A. Szalay, Shahrokh Shabahang and Yong Yu

(Inventors)

☒ executed on even date herewith or

☐ having Serial No. \_\_\_\_\_, filed \_\_\_\_\_

do(es) hereby appoint as attorneys of record with full power of substitution and revocation, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith; David A. Farah, Reg. No. 38,134; Jeffrey G. Sheldon, Reg. No. 27,953; Denton K. Mak, Reg. No. 31,695; Denton L. Anderson, Reg. No. 30,153; Robert J. Ross, Reg. No. 47,037; Anthony G. Vella, Reg. No. 47,152; James W. Collett, Reg. No. 46,636; and Gary F. Wang, Reg. No. 44,392.

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Attn: David A. Farah, M.D.

Direct Telephone Calls to:  
**DAVID A. FARAH, M.D.**  
(626) 796-4000

I, the undersigned, declare that I am the (an) owner of the above-identified application or, if the owner is a corporation, partnership, or other association, I am authorized to make this appointment on behalf of the owner, and I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon.

2 0 1	Full Name of Individual Owner
	Post Office Address
	Signature of Owner Date

2 0 2	Full Name of Declarant If owner is corporation, partnership, or association  Barry L. Taylor, Ph.D.
	Title of Declarant  Vice President for Research Affairs
	Address of Declarant  Loma Linda University Loma Linda, California 92350
	Signature of Declarant Date  <i>Barry L. Taylor</i> 1-24-01

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

David A. Farah, Reg. No. 38,134; Jeffrey G. Sheldon, Reg. No. 27,953; Denton L. Anderson, Reg. No. 30,153; Danton K. Mak, Reg. No. 31,695; Robert J. Rose, Reg. No. 47,037; Anthony G. Vella, Reg. No. 47,162; James W. Collett, 48,836; and Gary F. Wang, Reg. No. 44,392.

I hereby authorize them to act and rely on instructions from and communication directly with the person/assignee/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Sheldon & Mak to the contrary.

Please direct all correspondence in this case to Sheldon & Mak at the address indicated below:

Sheldon & Mak  
c/o David A. Farah, M.D.  
225 South Lake Avenue, 9th Floor  
Pasadena, California 91101  
Telephone No. (626) 798-4000

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Date Jan. 24 <sup>th</sup> / 2001		Date 1/24/01		Date 1/24/01

For Additional Inventors:  
Indicate here and attach sheet with same information, including date and signature.